

In The United States Court of Federal Claims

No. 98-168C

(Filed: September 18, 2008)

NORTH STAR ALASKA HOUSING
CORPORATION,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

ORDER

On April 15, 2008, the court awarded judgment for plaintiff, including incentive fees for contract performance years 1998, 1999, 2000, and 2001. On June 18, 2008, plaintiff filed a motion to correct the judgment stating that “through oversight or omission, [the court] mistakenly failed to list the 1997 incentive fee award in the amount of \$39,981.” On July 21, 2008, defendant filed a response stating that “none of the complaints in these consolidated cases covers an incentive fee for 1997. The Second Amended Complaint in Case No. 98-168C (Fed. Cl.) covers, in ¶ 60, an incentive fee for 1998. The November 19, 2002, complaint in Case No. 02-1632C (Fed. Cl.) covers, in ¶ 78, incentive fees for 1999 ‘to the present.’ The complaint in Case No. 03-2699C (Fed. Cl.) does not cover incentive fees for any years.” Plaintiff filed a response on July 29, 2008.

Defendant is correct that none of plaintiff’s complaints in these consolidated cases covers an incentive fee for 1997. Furthermore, because defendant neither expressly nor impliedly consented to trial of the 1997 incentive fee, the issue cannot be treated as if it had been raised by the pleadings pursuant to RCFC 15(b). Where defendant addressed incentive fees claimed by plaintiff, it did so only for 1998 and years thereafter. *See, e.g.*, Defendant’s Motion in Limine, April 18, 2005, pp. 5-6; Defendant’s Post-Trial Reply Brief, February 21, 2006, p. 7. Defendant raised the issue of incentive fee awards made for years before 1998 only to object that “those issues [were] not properly before the court” because they were not raised in plaintiff’s complaints and to state that “the Court does not possess jurisdiction to entertain claims not brought to the attention of the contracting officer.” *See* Defendant’s Post-Trial Brief, January 13, 2006, pp. 8-9. It was for these reasons that the court did not include the 1997 fee in the monetary judgment

awarded here. There was no oversight or omission. Accordingly, plaintiff's motion to correct the judgment is hereby **DENIED**.

IT IS SO ORDERED.

s/ Francis M. Allegra

Francis M. Allegra

Judge